

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ARIZONA DEPARTMENT OF CORRECTIONS,
Petitioner,

v.

HON. MICHAEL BUTLER, JUDGE OF THE
SUPERIOR COURT OF THE STATE OF ARIZONA,
IN AND FOR THE COUNTY OF PIMA,
Respondent,

and

TIM WESLEY WEAVER,
Real Party in Interest.

No. 2 CA-SA 2019-0039
Filed September 25, 2019

Special Action Proceeding
Pima County Cause No. CR20182803004

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

Mark Brnovich, Arizona Attorney General
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Attorney General, Phoenix
Counsel for Petitioner

Joel Feinman, Pima County Public Defender
By Dawn Priestman and Corrinna Molnar, Assistant Public Defenders,
Tucson
Counsel for Real Party in Interest

OPINION

Judge Espinosa authored the opinion of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

ESPINOSA, Judge:

¶1 In this capital murder prosecution, the Arizona Department of Corrections (DOC) challenges by special action the respondent judge’s order requiring it to provide to counsel for real-party-in-interest Tim Weaver, Weaver’s Security Target Group (STG) file, which pertains to his membership in the Aryan Brotherhood (AB), without redactions. We exercise our discretionary jurisdiction to review this interlocutory ruling and, because the respondent erred, we grant relief. *See* Ariz. R. P. Spec. Act. 1(a) (special-action review available when there is no adequate remedy by appeal); *Green v. Nygaard*, 213 Ariz. 460, ¶ 6 (App. 2006) (discovery order is interlocutory, non-appealable order, and appellate review by special action may be appropriate).

Background and Analysis

¶2 Section 31-221(A), A.R.S., identifies the kinds of documents DOC must maintain in its master file. Subsection (A)(8) refers to “[a]ny other pertinent data concerning the person’s background, conduct, associations and life history as may be required by the department with a view to the person’s reformation and to the protection of society,” which includes information about gang activity such as the STG file. Section 31-221(C) provides that all DOC records are subject to disclosure under A.R.S. § 39-121, the public records inspection statute, except records “(1) Revealing the identity of a confidential informant. (2) Endangering the life or physical safety of a person. (3) Jeopardizing an ongoing criminal investigation.” Subsection (D) permits “[a] prisoner [to] view the prisoner’s own automated summary record file, excluding those categories listed in subsection C,” and subsection (E) prohibits a prisoner from having “access to any prisoner records other than . . . the prisoner’s own automated summary record file” Section 31-221(G) lists the documents that are included in the automated summary file, and the STG file is not among them.

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¶3 The interpretation and application of a statute is a question of law, which we review de novo. *Starr Pass Resort Devs., LLC v. Harrington*, 245 Ariz. 495, ¶ 3 (App. 2018). Special-action relief is appropriate when the respondent judge has abused his or her discretion. *Ariz. R. P. Spec. Act. 3(c)*; see also *Salvation Army v. Bryson*, 229 Ariz. 204, ¶ 8 (App. 2012). And an abuse of discretion includes an error of law. *Salvation Army*, 229 Ariz. 204, ¶ 8; see also *Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 456 (1982) (court abuses its discretion when record fails to provide substantial support for its decision or court commits error of law in reaching decision).

¶4 DOC disclosed Weaver’s STG file to his two attorneys, redacting the names of certain inmates and their family members based on § 31-221(C)(1) and (C)(2).¹ In the respondent judge’s May 2, 2019 ruling, entered after a hearing and his in camera inspection of the unredacted file, he stated he had found “nothing in the unredacted documents that would prohibit release to the Defendant.” He added, “The STG records date back to 2009, and they do not . . . identify any confidential informants, and no information in the documents could reasonably be considered to endanger anybody’s life or physical safety.” DOC subsequently submitted the declaration of Lance Uehling, DOC’s STG Supervisor. After another hearing, the respondent again concluded that DOC had not shown redaction was warranted.

¶5 The record we have been provided, including a federal district court’s decision in a previous case Weaver litigated in that court, provides information about the STG policy, process, and records. Established by DOC in 1991 as an effort to control gang activity in Arizona,

¹DOC asserts briefly that § 31-221(E) only permits prisoners to view their own automated summary record, which does not include the STG file. It referred to § 31-221(E) in the objection it filed below after producing the redacted documents, but the actual objection was based on § 31-221(C) and its concern it would reveal “confidential informants, department staff and perhaps [place] members of the public at risk.” Weaver does not respond to this argument, asserting without authority that prisoners may access their own STG file subject to § 31-221(C). The respondent did not address the implications of § 31-221(E) and DOC claims the judge “ignored it.” In any event, the issue has been rendered moot by the fact that DOC disclosed the redacted record to Weaver’s attorneys, objecting only under § 31-221(C), and DOC has conceded Weaver is entitled to portions of the record because it includes documents he created during the STG validation proceedings.

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the policy includes a process of identifying and validating an inmate's membership in gangs and segregating them from the general prison population. An inmate validated as a member of a gang such as the AB may disavow membership through the debriefing process or Step-Down Program. During debriefing, a validated STG member renounces his affiliation, and he provides information regarding the STG's structure and activity. The debriefed member is then placed in Protective Segregation and may be placed in permanent Protective Segregation status. Significantly, Weaver himself had previously asserted in the federal proceedings that debriefing creates a serious risk to an inmate's safety because a debriefed inmate is required to inform on STG structures, activity, and membership and essentially becomes a "snitch."

¶6 In his declaration, STG Supervisor Lance Uehling stated that, based on his more than nineteen years of experience with DOC, the AB is "a criminal syndicate inside and outside of prison . . . and one of [DOC's] most dangerous Security Threat Groups." He further stated Weaver is a member of the AB, "which has a history of threatening and extorting the family members of inmates as a way of controlling the inmate." He reviewed Weaver's STG file, stating it contains a list of AB members and some of their family, adding, "[e]ven though the list was compiled 10 years ago, or more, that information in the hands of current [AB] members would endanger the life and safety of some of the people on the list," including "at least five names of family members of debriefed inmates" and the family members of three inmates who are not in "good standing" with the AB. He added that he had personal experience with the AB because they had obtained his home address and threatened him and his family, for which some inmates were prosecuted in 2015. Finally, Uehling stated he believes release of Weaver's "unredacted STG file will endanger the life and safety of members of the public."

¶7 The information before the respondent judge established that debriefed inmates are not materially distinguishable from confidential informants for purposes of § 31-221(C)(1). Additionally, it established that the redacted portions of the STG file include the identities of debriefed inmates or former inmates, their families, and the family members of inmates not in "good standing" with the AB, records "[e]ndangering the life or physical safety of a person." § 31-221(C)(2). In view of this unrefuted evidence, the respondent's disclosure order was erroneous.

¶8 We lastly note that although Weaver asserts "this issue is not one of weighing competing interests," he also contends that his constitutional rights to present a complete defense on the merits and in

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mitigation should outweigh the state's interests in shielding the redacted names. Notwithstanding comments the respondent judge made during the hearings, he did not balance Weaver's claimed need for the information to defend against the capital murder charge against DOC's statutory obligation to redact the information. Indeed, Weaver insisted below, and the respondent ultimately agreed, that DOC had not sustained its burden under the statute and therefore a balancing of interests was not required. In his response, Weaver nonetheless maintains his Sixth Amendment right to present a defense and Eighth Amendment entitlement to collect information in mitigation should override any state interest expressed by the statute in redacting the names. But these are questions of law and fact that must be resolved in the first instance before the respondent judge. On the record before us, those issues have not been developed. Accordingly, we address here only the application of § 31-221(C) and take no position on how the respondent might address the competing interests identified by defense counsel.

Disposition

¶9 For the reasons stated, we grant special-action relief, reversing the respondent's order compelling DOC to provide unredacted records revealing the identities of debriefed inmates and their families and other persons identified by Uehling in his declaration.